

By: Guillen, Bonnen of Brazoria

H.B. No. 51

A BILL TO BE ENTITLED

AN ACT

relating to regulation of the commercial oyster industry in this state; increasing criminal penalties; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 76, Parks and Wildlife Code, is amended by adding Section 76.0205 to read as follows:

Sec. 76.0205. SUSTAINABILITY OF OYSTER INDUSTRY. (a) In order to enhance the viability of commercial oyster fishing and ensure the sustainability of the oyster industry to accommodate the highest number of commercial oyster fishing boats, a person who purchases oysters under Section 47.0091 and holds a shellfish certificate, as defined by Section 436.002, Health and Safety Code, must:

(1) distribute, in an area designated by the department, oyster shells or other cultch material approved by the department in an amount equal to not less than 30 percent of the total volume of oysters purchased by the person in the previous license year; or

(2) pay a fee to the department in an amount calculated under Subsection (c).

(b) The distribution of oyster shells or other cultch material must be directly supervised by an agent or employee of the department.

(c) The department shall calculate the current market cost

1 of the acquisition and deposition of cultch material on a per cubic
2 yard basis. The fee charged under Subsection (a)(2) is the market
3 cost established under this subsection multiplied by 30 percent of
4 the total volume of oysters purchased by the person in the previous
5 license year. The fee charged under this section shall be deposited
6 to the credit of the oyster shell recovery and replacement program
7 account.

8 (d) A person who possesses oysters that do not meet the
9 requirements of Section 76.112:

10 (1) shall replace the oysters in the beds from which
11 they were taken as directed by an authorized employee of the
12 department; and

13 (2) is subject to any penalty and must perform any
14 remedy authorized by law.

15 SECTION 2. Sections 76.101(b) and (d), Parks and Wildlife
16 Code, are amended to read as follows:

17 (b) No [~~Except as provided in Subsection (d) of this~~
18 ~~section, no~~] person may take or attempt to take oysters from the
19 public water of this state, without the use of a boat, for pay or for
20 the purpose of sale, barter, or exchange or any other commercial
21 purpose without first having acquired from the department a
22 commercial oyster fisherman's license.

23 (d) Each member of the [~~The captain and~~] crew of a licensed
24 commercial oyster boat is [~~are not~~] required to have a general
25 commercial [~~oyster~~] fisherman's license [~~licenses~~] to take oysters
26 while they are on a licensed boat that is being used to take
27 oysters.

1 SECTION 3. Section 76.118, Parks and Wildlife Code, is
2 amended by amending Subsection (a) and adding Subsections (e-2) and
3 (e-3) to read as follows:

4 (a) Except as provided in Subsections (b), ~~[and] (c), (e-2),~~
5 and (e-3) [of this section], a person who violates a provision of
6 this subchapter or a regulation of the commission issued under this
7 subchapter commits an offense that is a Class C Parks and Wildlife
8 Code misdemeanor.

9 (e-2) If it is shown at the trial of a defendant, including
10 the captain of a commercial oyster boat, a member of the crew of a
11 commercial oyster boat, or a person who purchases oysters from the
12 captain or a member of the crew of a commercial oyster boat, for a
13 violation of a statute or a regulation adopted relating to oyster
14 size that the defendant has been convicted once in the oyster season
15 in which the offense under trial was allegedly committed of a
16 violation of a statute or a regulation adopted relating to oyster
17 size, the defendant is guilty of a Class B Parks and Wildlife Code
18 misdemeanor.

19 (e-3) If it is shown at the trial of a defendant, including
20 the captain of a commercial oyster boat, a member of the crew of a
21 commercial oyster boat, or a person who purchases oysters from the
22 captain or a member of the crew of a commercial oyster boat, for a
23 violation of a statute or a regulation adopted relating to oyster
24 size that the defendant was in possession of a cargo of oysters in
25 which 30 percent or more of the oysters were less than three inches
26 in length along an imaginary straight line through the long axis of
27 the shell, the defendant is guilty of a Class B Parks and Wildlife

1 Code misdemeanor.

2 SECTION 4. Subchapter C, Chapter 76, Parks and Wildlife
3 Code, is amended by adding Section 76.1181 to read as follows:

4 Sec. 76.1181. SUSPENSION OF LICENSE. (a) For purposes of
5 this section, "final conviction" includes a plea of guilty or nolo
6 contendere to or the imposition of deferred adjudication for an
7 offense.

8 (b) On final conviction for an offense punishable under
9 Section 76.118(e-3), the commercial oyster boat license of the boat
10 used in the commission of the violation is suspended for 30 days.

11 (c) On final conviction for an offense punishable under
12 Section 76.118(e-3), the commercial oyster boat captain's license
13 of the captain of the boat used in the commission of the violation
14 is suspended for 30 days. During the period of suspension, the
15 holder of the suspended license may not purchase a general
16 commercial fisherman's license or a commercial oyster fisherman's
17 license.

18 (d) On final conviction for an offense punishable under
19 Section 76.118(e-3), the general commercial fisherman's license of
20 a member of the crew of a boat on which the violation was committed
21 is suspended for 30 days. During the suspension period, the holder
22 of the suspended license may not purchase a commercial oyster boat
23 captain's license or a commercial oyster fisherman's license.

24 (d-1) On final conviction for an offense punishable under
25 Section 76.118(e-3), the commercial oyster fisherman's license of
26 the person who takes or attempts to take oysters without the use of
27 a boat is suspended for 30 days.

1 (e) On final conviction for an offense punishable under
2 Section 76.118(e-3), any license issued by the department to a
3 person that purchases oysters is suspended for 30 days. During the
4 suspension period, the holder of the suspended license may not
5 purchase a license issued by the department allowing the taking or
6 purchase of oysters.

7 (f) A suspension period described by this section must be
8 served during the public oyster season in which the violation
9 occurred, unless less than 30 days remain in the public oyster
10 season, in which case the suspension must be served at the beginning
11 of the next public oyster season.

12 SECTION 5. Section 76.119, Parks and Wildlife Code, is
13 amended by amending Subsection (a) and adding Subsections (c) and
14 (d) to read as follows:

15 (a) If a vessel licensed as a commercial oyster boat is
16 involved in a violation of this chapter, the captain of the vessel
17 licensed as a commercial oyster boat is primarily responsible for
18 the violation. A member of the crew of a vessel licensed as a
19 commercial oyster boat is not guilty of a violation unless the
20 member of the crew committed the violation against the captain's
21 orders, except for a violation of Section 76.109, 76.112, or
22 76.116, in which case each person on the vessel is responsible for
23 the violation.

24 (c) The captain of a vessel licensed as a commercial oyster
25 boat shall identify the name of the captain, the vessel, and each
26 member of the crew to each purchaser of oysters.

27 (d) A person who purchases oysters under Section 47.0091,

1 who holds a shellfish certificate as defined by Section 436.002,
2 Health and Safety Code, and who purchases oysters from a captain of
3 a vessel licensed as a commercial oyster boat, the holder of a
4 commercial oyster boat license, or a member of the crew of a
5 commercial oyster boat in violation of Section 76.109, 76.112, or
6 76.116 or this section may not possess the oysters and is subject to
7 any penalty prescribed by law.

8 SECTION 6. Section 76.301, Parks and Wildlife Code, is
9 amended by amending Subsections (c) and (f) and adding Subsection
10 (h) to read as follows:

11 (c) A proclamation issued under Subsection (a) of this
12 section may limit the quantity and size of oysters that may be
13 taken, possessed, sold, or purchased and may prescribe the times,
14 places, conditions, and means and manner of taking oysters.
15 [~~However, measures dealing with sale and purchase may only be~~
16 ~~implemented at first sale or exchange transaction.~~]

17 (f) A person who violates a proclamation issued under
18 [~~Subsection (a) of~~] this subchapter [~~section~~] commits an offense
19 that is a Parks and Wildlife Code Class C misdemeanor. [~~An offense~~
20 ~~under this section is punishable by a fine of not less than \$25 nor~~
21 ~~more than \$200.~~]

22 (h) A proclamation of the commission under this section
23 applies to any person who:

24 (1) purchases oysters from the captain of a commercial
25 oyster boat, the holder of a commercial oyster boat license, or a
26 member of the crew of a commercial oyster boat;

27 (2) purchases oysters under Section 47.0091; and

1 (3) holds a shellfish certificate, as defined by
2 Section 436.002, Health and Safety Code.

3 SECTION 7. Subchapter E, Chapter 76, Parks and Wildlife
4 Code, is amended by adding Section 76.304 to read as follows:

5 Sec. 76.304. VESSEL MONITORING SYSTEM. (a) The commission
6 by proclamation may establish a vessel monitoring system for
7 commercial oyster boats.

8 (b) Before the commission issues a proclamation under
9 Subsection (a), the department shall consult with commercial oyster
10 boat license holders concerning establishment of a vessel
11 monitoring system.

12 SECTION 8. Subchapter F, Chapter 76, Parks and Wildlife
13 Code, is amended by adding Sections 76.405, 76.406, and 76.407 to
14 read as follows:

15 Sec. 76.405. LICENSE BUYBACK PROGRAM. (a) The department
16 shall implement a license buyback program for licenses issued under
17 this subchapter as part of the oyster license moratorium program
18 established by this subchapter.

19 (b) The commission by rule shall establish criteria, using
20 reasonable classifications, for the department's use in selecting
21 licenses to be purchased. The department or executive director
22 shall consult with the oyster license moratorium review board
23 concerning establishment of the criteria.

24 (c) The department shall retire each license purchased
25 under the license buyback program until the commission finds that
26 management of the oyster fishery allows reissue of those licenses
27 through auction or lottery.

1 (d) The department shall set aside an amount determined by
2 commission rule that is at least 20 percent of the fees from
3 licenses issued under this subchapter to be used only for the
4 purpose of buying back commercial oyster boat licenses from willing
5 license holders. That money shall be sent to the comptroller for
6 deposit to the credit of the game, fish, and water safety account.

7 (e) The department may solicit and accept grants and
8 donations of money or materials from private or public sources for
9 the purpose of buying back licenses issued under this subchapter
10 from willing license holders.

11 (f) Money to be used for the purpose of buying back licenses
12 issued under this subchapter is not subject to Section 403.095,
13 Government Code.

14 (g) The commission shall consider the social and economic
15 viability of the oyster industry and input from the oyster license
16 moratorium review board regarding the reissue of commercial oyster
17 boat licenses through auction or lottery.

18 Sec. 76.406. PREVAILING AUTHORITY. A proclamation of the
19 commission under this subchapter prevails over any conflicting
20 provision of this chapter to the extent of the conflict.

21 Sec. 76.407. REPORT TO LEGISLATURE. (a) Not later than
22 November 1, 2020, the department shall report to the governor and
23 each member of the legislature an overview of the administration
24 and status of the oyster license buyback program, including the
25 biological, sociological, and economic effects of the program.

26 (b) This section expires September 1, 2021.

27 SECTION 9. The Parks and Wildlife Commission shall adopt

1 any rules required to implement Sections 76.405, 76.406, and
2 76.407, Parks and Wildlife Code, as added by this Act, not later
3 than June 1, 2018.

4 SECTION 10. (a) Except as provided by Subsection (b) of
5 this section, this Act takes effect September 1, 2017.

6 (b) Sections 76.405, 76.406, and 76.407, Parks and Wildlife
7 Code, as added by this Act, take effect June 1, 2018.